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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,974	10/12/2001	Donald Remboski	29248/AP01950	2948

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EXAMINER
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HARVEY, DIONNE

ART UNIT	PAPER NUMBER
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2646

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/976,974

Applicant(s)

REMBOSKI ET AL.

Examiner

Dionne N. Harvey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/2005
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. **Claims 1 and 23** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly amended claims include the added recitation of "indicating a device operating situation...". However, the Applicant's specification fails to provide support for a *means for displaying* the device operating situation. For the purpose of examination, "indicating" has been interpreted as "representing". Clarification and/or correction is hereby required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **1,7,13 and 17, 19-20** are rejected under 35 U.S.C. 102(b) as being anticipated by **Mizikovsky (US 5,559,860)**.

*Regarding claim 1, as best understood with regard to the U.S.C.112-first paragraph rejection above, Mizikovsky teaches an apparatus for selectively answering an incoming call, reading on "method of configuring the service state of a wireless communication device";*

Shown in **figure 3**, and **discussed in column 10, lines 10-12**, Mizikovsky teaches receiving an incoming phone call from a call source, the call source data reading on "set of operating parameters" defining receipt of an incoming call, which reads on "a preferred service state of the wireless communication device" for a device operator", the device operating parameters including a plurality of response categories, which reads on "a context parameter" indicating a device operating situation for a given uniquely identified caller, said caller's identification reading on "context data";

The user of the wireless device may program an ID processor so as to uniquely identify the source of an incoming telephone call, i.e., "context data", in which case the user input reads on "at least one source of context data";

assigning one of voice mail, distinctive ringing, communication scrambling, facsimile etc., in accordance with the stored response category i.e., "context parameter", and the stored calling party identification i.e., "context data".

*Regarding claim 7, Mizikovsky teaches that the service state comprises at least one of a call forwarding service state and a call forwarding to voice mail service state, see column 6, lines 51-61.*

*Regarding claim 13, in figure 1*, Mizikovsky teaches that the step of receiving a set of device operating parameters comprises providing a personal portable user interface **42**, and receiving the set of device operating parameters via the personal portable user interface see **column 7, lines 14-19**.

*Regarding claim 17*, Mizikovsky teaches that the service state comprises a ringing mode service state see **column 6, lines 30-43**.

*Regarding claim 19, in column 4, lines 56-60*, Mizikovsky teaches that the service state comprises a calling party identification service state.

*Regarding claim 20*, Mizikovsky teaches that the wireless communication device comprises a cellular telephone.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims **1,2,4-9,11-13,16-20,23,24,26-30,33-37 and 40** are rejected under 35 U.S.C. 102(e) as being anticipated by **Takagi (US 6,718,187)**.

*Regarding claim 1, as best understood with regard to the U.S.C.112 first paragraph rejection above*, Takagi et al. teaches a method configuring the service state of a wireless communication device, comprising the steps of:

**In column 7, lines 14-25**, Takagi teaches that sensors operate to transmit to a controller a plurality of conditions such as: 1.) the indicator of an incoming phone call was noticed; 2.) the indicator of an incoming phone call was not noticed within a certain time period; 3.) current vehicle speed; AND 4.) current inter-vehicle distance etc., wherein said compiled conditions are interpreted as reading on “receiving a set of operating parameters”;

Based on the sensed vehicle conditions, Takagi's device makes a determined response, such as: 1.) put the incoming phone call through to the driver; 2.) forwarding the incoming phone call to an answering service; AND/OR 3.) controlling the brake actuator. Said responses reading on “preferred service states”;

Takagi teaches that the data from the plurality of sensors may be related to various aspects such as the vehicle operation (*speed, inter-vehicle distance*) and the driver's burden (*driver's ability to take notice an incoming-call indicator*). As such, said various aspects are interpreted as reading on “context parameters”, wherein the device operating parameters include a context parameter indicating a device operating situation for a given data;

Takagi teaches that the context data, *that is, the data related to a particular context parameter such as vehicle speed*, is received from a respective sensor, said respective sensor reading on “at least one source of context data”;

And Takagi further teaches, “setting the service state”, in accordance with the context parameter and the context data.

*Regarding claim 2, in column 7, lines 25-27, & column 9, lines 62-column 10, line 7, Takagi et al. teaches that the context parameter and the context data each relate to a speed of the wireless communication device.*

*Regarding claims 4 and 26, Takagi et al. teaches that the context parameter and the context data each relate to time, **see column 7, lines 35-37.***

*Regarding claims 5 and 27, Takagi et al. teaches that one factor taken into account when determining the service state, is the “driving burden”, which is interpreted as reading on the “activity of the device operator”.*

*Regarding claims 6 and 28, Takagi recognizes a need in the art for configuring the service state of a device dependent upon the driving burden of the device operator, thereby reading on “the context parameter and the context data each relate to a cognitive load of the device operator.”*

*Regarding claims 7 and 29, Takagi teaches that the service state comprises at least one of a call forwarding service state and a call forwarding to voice mail service state, **see column 7, lines 39-40.***

*Regarding claims 8 and 30, in **column 6, lines 20-25**, Takagi teaches that a hands-free call may be made using the microphone and speaker, reading on “a voice activated state” as well as “hands-free voice interface”.*

*Regarding claim 9, Takagi et al. teaches receiving data pertaining to the vehicle speed, which reads on “relating to the operation of a vehicle”.*

*Regarding claims 11 and 12, in **column 9, lines 42-50**, Takagi et al. teaches that data pertaining to the operation of the vehicle, is processed such that the wireless*

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device will output an automatic response stating "I am driving right now...", thereby reading on "communicatively coupling" and "the step of receiving data relating to the operation of the vehicle comprises fusing data within the vehicle and providing the fused data to the wireless communication device".

*Regarding claim 13*, Takagi teaches a portable user interface (11).

*Regarding claims 16 and 33*, Takagi takes into account any variety of conditions, which would potentially inhibit the device operator from noticing the reception of call. The Examiner interprets the disclosure of Takagi as including ambient sound within the vehicle. Since a high degree of ambient sound might be indicative of a heated conversation between in the device operator and vehicle passengers, further distracting the driver from noticing the incoming call indicia.

*Regarding claim 17*, Takagi teaches that when the electronic device is placed within the vehicle unit (11), the ringing level is reduced to a minimum volume, reading on "a ringing mode service state", as broadly claimed.

*Regarding claims 18 and 35, in column 7, lines 14-16*, Takagi teaches a completion delay service state.

*Regarding claim 19, in column 6, lines 34-38*, Takagi teaches "calling party identification service state", as claimed.

*Regarding claims 20 and 37*, Takagi et al. teaches a cellular telephone.

*Regarding claim 23, as best understood with regard to the U.S.C.112 first paragraph rejection above*, Takagi et al. teaches a sensor fusion module (110) coupled to receive context data (pertaining to the vehicle speed) from at least one sensor; a



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memory (see **column 9, line 62 – column 10, line 20**, wherein Takagi teaches an *inter-vehicle distance control tracking system which stores an average distance*) including stored therein a context parameter indicating a device operating situation for a given context data; and a processor **20** for adjusting a service state of the wireless communication device based upon the context data and the context parameter.

*Regarding claim 24, in column 7, lines 25-27, & column 9, lines 62-column 10, line 7*, Takagi et al. teaches that the context parameter and the context data each relate to a speed of the wireless communication device.

*Regarding claim 34*, Takagi teaches that when the electronic device is placed within the vehicle unit (11), the ringing level is reduced to a minimum volume, reading on “a ringing mode service state”, as broadly claimed.

*Regarding claim 36, in column 6, lines 33-38*, Takagi teaches an incoming call detection function for detecting the telephone number of the received call.

*Regarding claim 40*, Takagi et al. teaches a telephone and thereby inherently teaches a “computer”.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims **21,22,38,39 and 41** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Takagi (US 6,718,187)** in view of **Singh (US 6,389,278)**.

*Regarding claims 21,22,38,39 and 41*, Takagi does not clearly teach that the wireless device includes a pager, personal digital assistant or web browser.

Singh, **in column 1, lines 18-25** teaches that a wireless device, such as a telephone, may be combined with any combination of a pager, PDA and web-browser.

It would have been obvious for one of ordinary skill in the art at the time of the invention to equip the telephone of Takagi, with any one or more of a pager, PDA and/or web-browser, for the purpose of expanding the versatility of the wireless device.

5. Claims **3,15,25 and 32** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Takagi (US 6,718,187)** in view of **Stewart (US 6,546,257)**.

Regarding claims 3,15,25 and 32, Takagi does not clearly teach that the context parameter and context data for determining a service state, relates to the location/altitude of the wireless device.

Stewart teaches that a wireless device may be configured such that specific information is provided, reading on "service state", in accordance with the location/altitude of the wireless device, via GPS.

Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Takagi and Stewart, also configuring the wireless device such that it provides regional information to the user, such that the user may be made aware of promotions and advertisements in their immediate areas.

6. Claims **10, 14 and 31** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Takagi (US 6,718,187)** in view of **Sheth (US 6,405,106)**.

Regarding claims 10,14 and 31, Takagi does not clearly teach that the context parameter and context data for determining a service state, relates to the vehicle condition, vehicle environment data and ambient lighting.

Sheth teaches, in **column 1, line 65 – column 2, line 19**, that data relating to the environment and weather, which reads on “vehicle environment” and “ambient lighting”, as well as engine functions of a vehicle, which reads on “vehicle conditions”, may be compiled and processed , so as to ensure the comfort of the vehicle operator.

It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Takagi and Sheth, for the purpose of maintaining the comfort of the user, as disclosed by Sheth.

### ***Response to Arguments***

Applicant's arguments filed 2/22/2005 have been fully considered but they are not persuasive.

7. Regarding the applicant's argument that Mizikovsky Does Not Disclose Setting A Service State Of Its Device Based On A Context Parameter Indicating A Device Operating Situation:

As clearly set forth in the above rejection, wherein alert of an incoming telephone call reads on “a device operating situation”, and wherein one of the plurality of stored response categories reads on “context parameter”, the Examiner Maintains that the

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assigned response i.e., "service state" of the wireless communication device, is chosen based upon the predetermined response category which is references at the receipt of an incoming call from a particular caller.

8. Regarding the applicant's argument that Mizikovsky Does Not Consider A Device Operating Situation Such As: The Device Is In Use In A Moving Vehicle, Or The Device Is Unattended Etc.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. The device is in use in a moving vehicle; the device is unattended) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

9. Regarding the applicant's argument that Mizikovsky Does Not Select A Service State Based On The Operating Situation.

Please see the above rejection, wherein the Examiner discusses Mizikovsky's teaching of setting the service state in accordance with the context parameter and context data. The Applicant further asserts that the identity of an incoming caller is not based on an operating situation of the wireless device. However, where the receipt of an incoming call is defined as an operating situation (for example, a first operating situation may be two-way communication; the second operating situation may be use of the 'calendar' or organizational applications; a third operating situation may be use of the 'calculator' application; and a fourth operating situation may be use of the 'camera'

application, and so forth, as is well known in the art) it is in the first "operating situation" that the ID processor operates to identify an incoming caller.

The rejection is therefore maintained.

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne N Harvey whose telephone number is 703-305-1111. The examiner can normally be reached on 9-6:30 M-F and alternating Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
D. Harvey

  
GEORGE ENG  
SENIARY EXAMINER